

Before the MAIL ROOM
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	2004 APR -9 P 6: 51
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	REIVED
)	
Spartanburg County School District Six)	File No. SLD-140859
Spartanburg, South Carolina)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: April 5, 2001

Released: April 6, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review submitted by Spartanburg County School District Six (Spartanburg), Spartanburg, South Carolina, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Spartanburg seeks review of SLD's denial of certain funding requests for discounted services under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review and affirm SLD's denial of Spartanburg's request for discounts.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Commission's rules require that the applicant make a bona fide request for services by filing

¹ Letter from Dr. Robert E. Pettis, Spartanburg County School District Six, to Federal Communications Commission, filed May 15, 2000 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

with the Administrator an FCC Form 470,⁴ which is posted to the Administrator's website for all potential competing service providers to review.⁵ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting an FCC Form 471, which requests support for eligible services.⁶ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. On October 26, 1999, SLD rejected certain Year 2 funding requests made by Spartanburg for failure to comply with the Commission's competitive bidding requirements.⁷ Specifically, SLD rejected the funding requests because the requests were based on contracts awarded between July 11, 1997 and February 27, 1998, which were required to be rebid for Funding Year 2 under Commission rules.⁸ By letter filed November 24, 1999, Spartanburg appealed SLD's funding commitment decision.⁹ On May 3, 2000, SLD denied Spartanburg's appeal, stating that Spartanburg had not complied with SLD's minimum processing standards.¹⁰ In response, Spartanburg filed the instant Request for Review, noting that the Spartanburg County School District had bid the contract in question according to the South Carolina Procurement Code and questioning SLD's requirement that a legally bid five-year contract be rebid for funding year 2 in order to qualify for funding.¹¹

4. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.¹² The

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

⁵ 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (November 2, 2000).

⁶ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (FCC Form 471).

⁷ Letter from Schools and Libraries Division, Universal Service Administrative Co., to Dr. Robert E. Pettis, Spartanburg County School District Six, dated October 26, 1999 (Funding Commitment Decision Letter).

⁸ See 47 C.F.R. § 54.511(c).

⁹ Letter from Dr. Robert E. Pettis, Spartanburg County School District 6, to Schools and Libraries Division, filed November 24, 1999.

¹⁰ Letter from Universal Service Administrative Co., Schools and Libraries Division, to Dr. Robert E. Pettis, Spartanburg County School District Six, dated May 3, 2000 (Administrator's Decision on Appeal).

¹¹ Request for Review.

¹² 47 C.F.R. §§ 54.502, 54.503.

Commission's rules provide that, with one limited exception for existing, binding contracts, an eligible school, library, or consortium must seek competitive bids for all services eligible for support.¹³ In accordance with the Commission's rules, SLD posts an applicant's FCC Form 470 specifying requested services on its web page for 28 days prior to the applicant's signing a contract for eligible services and submitting FCC Form 471.¹⁴

5. As noted, the Commission's rules provide that eligible schools and libraries with existing contracts are exempt from the competitive bidding requirement under certain circumstances. Section 54.511(c)(1) exempts contracts entered into on or prior to July 10, 1997 from competitive bidding requirements for the duration of the contract and also provides that contracts signed after July 10, 1997 and before January 30, 1998 (the date on which the Schools and Libraries website was fully operational) would be exempt from the competitive bidding requirement for services provided through December 31, 1998.¹⁵ The Commission set out these exemptions because it did not wish to penalize schools and libraries that had to negotiate contracts prior to the date that the universal service competitive bidding system became fully operational.¹⁶ In addition, once an applicant submits an FCC Form 470 and complies with the 28-day posting period, the applicant is permitted to sign a long-term contract at that time and, having complied with the competitive bidding requirement prior to signing the contract, the applicant need not submit any additional FCC Form 470s for the duration of that contract.¹⁷

¹³ 47 C.F.R. §§ 54.504, 54.511(c).

¹⁴ 47 C.F.R. § 54.504(c).

¹⁵ 47 C.F.R. § 54.511(c)(1). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration* in CC Docket No. 96-45, *Report and Order* in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5441, para. 217 (1998) (*Fourth Reconsideration Order*). Previously, in an order released on July 10, 1997, the Commission found that only contracts signed after November 8, 1996 and prior to January 30, 1998 were exempt from the competitive bidding requirement for services provided through December 31, 1998. *Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Order on Reconsideration*, 12 FCC Rcd 10095 (1997) (*July 10 Order*). Upon reconsideration, however, the Commission subsequently amended section 54.511(c) in order to avoid penalizing those that were uncertain of their rights prior to the release of the *July 10 Order*. *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

¹⁶ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Errata*, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*affirming Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (Nov. 2, 2000); *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Order*, 15 FCC Rcd 6732, 6736, para. 10 (Common. Carrier. Bur. 1999) ("We conclude that permitting a school or library to commit to a long-term contract after participating in the competitive bidding process does not compromise the benefits derived from competition. As long as all providers have had the opportunity to compete for the same contract, schools or libraries can enter into renewable contracts of any length or form, as permitted by state law.").

6. The Commission has repeatedly emphasized the importance of the competitive bidding requirement, stating that it helps to ensure that schools and libraries will receive the lowest possible pre-discount price.¹⁸ The Commission has concluded that competitive bidding is the most efficient means for ensuring both that eligible schools and libraries are informed about the choices available to them and that prices are not unnecessarily high.¹⁹ In order to ensure that schools and libraries contracting for services between July 10, 1997 and January 30, 1998 did not negotiate long-term contracts and thereby avoid the competitive bidding requirement altogether, the Commission limited the exemption of the competitive bidding requirement for contracts signed between July 10, 1997 and January 30, 1998 to services provided through December 31, 1998, regardless of the duration of the contract as a whole.²⁰

7. A review of the record reflects that Spartanburg signed a five-year contract for internal connections on October 2, 1997. Pursuant to section 54.511(c)(1)(ii), Spartanburg was exempt from the competitive bidding requirement for Funding Year 1. As was the case with all schools and libraries entering into contracts between July 10, 1997 and January 30, 1998, Spartanburg was required to seek competitive bids for all services eligible for support for Funding Year 2.²¹ Spartanburg should have known that it would be required to comply with the competitive bidding requirements for Year 2.²² Because Spartanburg did not seek competitive bids for Funding Year 2, we find that SLD correctly denied Spartanburg's request for discounts. We do note, however, that SLD's denial of Spartanburg's appeal incorrectly concluded that the request for discounts should be denied because of Spartanburg's failure to meet minimum processing standards. Since SLD did deny Spartanburg's appeal, however, we find no need to remand this Request for Review to SLD.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a),

¹⁸ See *July 10 Order*, 12 FCC Rcd at 10098, para. 9.

¹⁹ *Universal Service Order*, 12 FCC Rcd at 9029, para. 480.

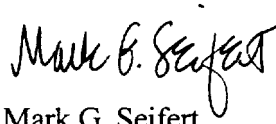
²⁰ *Fourth Reconsideration Order*, 13 FCC Rcd at 5445, para. 217.

²¹ In participating in competitive bidding, these applicants may consider the current contract as one of the bids. In the *Universal Service Order*, the Commission determined that applicants should be given maximum flexibility to choose the service offerings that most effectively and efficiently suit their needs so long as this flexibility comports with state and local procurement rules with which they must otherwise comply. Applicants must weigh for themselves the most cost-efficient bid. *Universal Service Order*, 12 FCC Rcd at 9029, para. 481. The costs associated with terminating a current contract, if any, are part of the cost-effectiveness analysis for applicants. In situations where the applicant determines, after complying with the 28-day competitive bidding period and carefully considering all bona fide bids submitted, that its current contract is the most cost-effective option, it must inform SLD in its application that it has complied with the Commission's competitive bidding requirements and is continuing with the current contract.

²² See *supra*, n. 7. As of July 10, 1997, all applicants were put on notice that applicants entering into multi-year contracts between July 10, 1997 and January 30, 1998 would be required to comply with the Commission's competitive bidding rules after the first funding year.

that the May 8, 2000 Request for Review filed by Spartanburg County School District Six, Spartanburg, South Carolina, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Mark G. Seifert". The signature is written in a cursive style with a large, stylized "S" at the end.

Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau